4011

BILL NO. S-78-03-32

SPECIAL ORDINANCE NO. S-56-78

AN ORDINANCE approving an agreement with Henry B. Steeg & Associates for Engineering Services for Additions and Improvements to Wastewater Facilities.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the agreement dated March 20, 1978, between the City of Fort Wayne, by and through its Mayor and the Board of Public Works and Henry B. Steeg & Associates, for:

> For engineering services to design Advance Wastewater Treatment Facilities necessary to meet our National Pollutant Discharge Elimination System (NPDES) Permit as issued by State of Indiana,

for an amount to be determined by the current Federally Audited Overhead Factor, all as more particularly set forth in said Agreement which is on file in the Office of the Board of Public Works and is by reference incorporated herein, made a part hereof and is hereby in all things ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

Paul M. Burns
Councilman

APPROVED AS TO FORM AND LEGALITY,

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by Hinga, and duly adopted, read the second time by title and referred to the Committee on City Utilities (~~and the City Plan Commission~~ for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, ~~City-County Building~~, Fort Wayne, Indiana, on _____, the _____ day of _____, 19__, at _____ ~~o'clock~~ _____ M., E.S.T.

DATE: 3-28-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Hinga, and duly adopted, placed on its passage.

PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	9				
BURNS	✓				
HINGA	✓				
HUNTER	✓				
MOSES	✓				
NUCKOLS	✓				
SCHMIDT, D.	✓				
SCHMIDT, V.	✓				
STIER	✓				
TALARICO	✓				

DATE: 4-11-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (~~GENERAL~~) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. S-56-78 on the 11th day of April, 1978.

ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 12th day of April, 1978, at the hour of 11:30 o'clock A M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 17th day of April, 1978, at the hour of 11 o'clock A M., E.S.T.

Robert E. Armstrong
MAYOR

Bill No. S-78-03-32

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance

Approving an agreement with Henry B. Steeg & Associates for Engineering Services for Additions and Improvements to Wastewater Facilities

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance DO PASS.

PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER

1-11-78 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

AGREEMENT FOR ENGINEERING SERVICES

FOR

ADDITIONS AND IMPROVEMENTS
TO THE
WASTEWATER FACILITIES

BY AND BETWEEN THE

CITY OF
FORT WAYNE, INDIANA

AND

HOWARD NEEDLES TAMMEN & BERGENDOFF
HENRY B. STEEG & ASSOCIATES DIVISION
ARCHITECTS ENGINEERS PLANNERS
INDIANAPOLIS, INDIANA

A G R E E M E N T

THIS AGREEMENT, by and between the CITY OF FORT WAYNE, INDIANA, acting by and through its Board of Public Works, hereinafter referred to as the OWNER, and HOWARD NEEDLES TAMMEN & BERGENDOFF, HENRY B. STEEG & ASSOCIATES DIVISION, a partnership, hereinafter referred to as the ENGINEER, WITNESSETH THAT:

WHEREAS, the wastewater facilities of the OWNER are in need of certain improvements pursuant to an Order of the State of Indiana; and

WHEREAS, the OWNER has had prepared a Facility Plan for said improvements and pursuant to IC 19-2-5-1 et seq. intends to undertake the construction of same; and

WHEREAS, there are Federal and State funds available to assist in financing municipal wastewater facilities and the OWNER intends to request said funds for the ultimate construction of the project; and

WHEREAS, the ENGINEER agrees to perform for the project, professional services as hereinafter set forth, consistent with Title II Regulations 40 CFR Part 35; and

WHEREAS, the OWNER agrees to employ, and does hereby employ the ENGINEER for the professional services hereinafter set forth, and agrees to pay the ENGINEER for such services the fee as hereinafter set forth in this Agreement.

ARTICLE 1. THE ENGINEER'S SERVICES

A. Upon acceptance by the OWNER of the State and Federal Step 2 grant-in-aid offers, the ENGINEER shall perform in three phases and consistent with the Facility Plan dated June, 1977 as follows:

Phase A - Aeration Process Efficiency
Upgrading to 42 MGD

1. Prepare preliminary mechanical and structural layout drawings with an estimated completion date of April 7, 1978;
2. Prepare drawings and specifications for blower with an estimated completion date of May 3, 1978;
3. Prepare drawings and specifications for air distribution system with an estimated completion date of June 8, 1978;
4. Prepare drawings and specifications for return sludge upgrading with an estimated completion date of June 16, 1978;
5. Prepare drawings and specifications for terminal pond reaeration and modifications with an estimated completion date of June 16, 1978;
6. Prepare drawings and specifications for process control instrumentation modifications with an estimated completion date of June 16, 1978;
7. Assist the OWNER in preparation of necessary State construction applications and permits with an estimated completion date of June 16, 1978; and
8. Prepare final cost estimates and complete bid documents for this Phase A with an estimated completion date of June 30, 1978.

Phase B - Full-Scale Nitrification to 60 MGD

1. Prepare preliminary mechanical, equipment and structural layout drawings with an estimated completion date of August 18, 1978;
2. Prepare process equipment specifications with an estimated completion date of September 1, 1978;
3. Prepare drawings for this plant process equipment and piping with an estimated completion date of September 15, 1978;
4. Prepare architectural detailed drawings for necessary structures with an estimated completion date of October 13, 1978;
5. Prepare drawings for process control instrumentation modifications with an estimated completion date of November 10, 1978;
6. Prepare final drawings and specifications with cost estimates for this Phase B suitable for public bidding with an estimated completion date of December 15, 1978;
7. Assist the OWNER in preparation of necessary State construction application and permits with an estimated completion date of January 19, 1979; and
8. Provide Value Engineering Services as outlined in Exhibit B with an estimated completion date of November 1, 1978.

Phase C - Upgrading Effluent Polishing Facility

1. Prepare conceptual design drawings and exhibits with an estimated completion date of July 14, 1978;
2. Prepare preliminary equipment, mechanical and structural layout drawings with an estimated completion date of September 15, 1978;
3. Prepare process equipment specifications with an estimated completion date of October 13, 1978;

4. Prepare process equipment and piping layout drawings with an estimated completion date of December 1, 1978;

5. Prepare detailed architectural drawings for this Phase C with an estimated completion date of January 5, 1979;

6. Prepare details and section drawings for this Phase C with an estimated completion date of February 16, 1979;

7. Prepare mechanical and electrical drawings for this Phase C with an estimated completion date of April 27, 1979;

8. Submit final drawings and specifications with cost estimates for this Phase C with an estimated completion date of May 25, 1979;

9. Assist the OWNER in the preparation of the necessary State construction application and permits with an estimated completion date of June 22, 1979; and

10. Provide Value Engineering Services as outlined in Exhibit B with an estimated completion date of May 1, 1979.

B. Upon acceptance by the OWNER of the State and Federal Step 3 grant-in-aid offers, the ENGINEER shall continue its services by providing services during construction under the Step 3 phase of the project as follows:

1. Assist the OWNER in obtaining and evaluating construction proposals.

2. Assist the OWNER in the preparation of the bond transcript by supplying necessary engineering data and opinions.

3. Provide periodic visits to the project during construction to observe the progress of the work and to inform the OWNER whether or not the work is proceeding in reasonable compliance with the drawings and specifications and to advise the OWNER if it is necessary to disapprove the work as failing to conform with the contract documents.

4. Check shop drawings, samples, equipment and other information submitted by the construction contractor for compliance with the design concept of the drawings and specifications.

5. Act upon the construction contractor's requests for payments in accordance with the provisions of the general conditions of the construction contract(s).

6. Witness and fully report to the OWNER the results of all special performance tests required for the project.

7. Certify substantial completion and approval of the construction contractor's final payment request when the terms of the construction contract have been satisfied.

8. Provide four (4) copies of an Operation and Maintenance Manual to the OWNER for the project in a form suitable for approval by the State and Federal agencies and provide operator training.

9. Evaluate project changes as necessary, prepare design and non-design change orders to the construction contract(s).

10. Provide one set of record drawings which reflect changes in the work subsequent to the award of the construction contract(s) following the completion of the work and based upon information supplied by the construction contractor(s).

C. The ENGINEER shall not be responsible for the methods or techniques employed by the construction contractor, nor shall the ENGINEER guarantee or warrant the construction contractor's performance, nor shall the ENGINEER be required to direct or take charge of work done by "force account".

D. Upon written authorization by the OWNER, the ENGINEER shall continue his service by providing one or more resident project representatives in order to provide more extensive representations at the project site during construction. Furnishing of such construction representation shall not make the ENGINEER responsible for methods or techniques employed by the construction contractor.

E. Additional services in connection with the project not otherwise provided for in this Agreement may be arranged for between the ENGINEER and the OWNER and incorporated into this Agreement.

ARTICLE 2. DUTIES OF THE OWNER. The OWNER agrees to provide the ENGINEER with complete information concerning the requirements of the project and to perform as follows:

A. Make available all prior studies, reports, permits, applications and all records pertaining to the wastewater facilities, population projections, land use regulations, and water use records.

B. Provide access to and make all provisions for the ENGINEER to enter upon public and private property as required for the ENGINEER to perform such work as surveys and inspections in the development of the project.

C. Give thorough consideration to all reports, sketches, estimates, drawings, specifications, proposals, and other documents presented by the ENGINEER, and shall inform the ENGINEER of all decisions within a reasonable time so as not to delay the work of the ENGINEER.

D. Promptly hold all required special meetings, serve all required public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the project including legal and fiscal services and pay all costs incidental thereto.

E. Advertise for invitation to bid from bidders, open the bids at the appointed time and place and pay all costs incidental thereto, including filing fees and permit charges.

F. Furnish the ENGINEER with a copy of any design and construction standards he shall require the ENGINEER to follow in the preparation of contract documents for the project.

G. Appoint an OWNER'S representative with respect to the work to be performed under this Agreement; and such person shall have complete authority to transmit instructions, receive information, and interpret and define OWNER'S policies. The ENGINEER shall be entitled to rely on all representations made by the OWNER'S representative unless otherwise directed in writing by the OWNER.

H. Furnish information on soil and underground conditions at the project site adequate for the intended purpose.

I. Furnish laboratory analysis, sampling data on wastewater characteristics, and flow measuring of wastes from special sources connected to or to be connected to the sewerage system.

J. Sign and file for all necessary approvals from regulatory agencies and to pay all cost incidental thereto.

K. Upon notice, promptly inform the ENGINEER of any changes or defects in the project.

L. Furnish all labor for any necessary operations of the equipment and appurtenances of the existing facilities as may be required by the ENGINEER.

ARTICLE 3. PAYMENT TO THE ENGINEER. For the services rendered under this Agreement, the ENGINEER shall be paid a fixed fee and its cost. Cost shall be determined as direct salaries times the Federally audited overhead factor in effect at the time services are performed, which includes fringe benefits, salary related cost and general overhead, plus out-of-pocket expenses and equipment rental. The Federally audited overhead factor for calendar year ending December 31, 1976 is 2.2305.

The estimated cost of services for the three phases described in Article 1A is as follows:

Phase	Cost	Fixed Fee	Total
A	$96,345.00	$14,452.00	$110,797.00
B	$207,324.00	$31,098.00	$238,422.00
C	$321,809.00	$48,271.00	$370,080.00

It is estimated that the total cost to the OWNER for the performance of the aforementioned services, exclusive of the fixed fees, will not exceed the estimated cost as provided above and the ENGINEER agrees to use its good faith effort to perform said work within such estimated cost. If, at any time as the work progresses, the ENGINEER has reason to believe that the cost will be greater than the estimated cost hereof, the

ENGINEER shall notify the OWNER and agencies which have tendered grants in writing to that effect, giving the revised estimate of such cost for said work.

For billing purposes, the ENGINEER shall use its projected overhead factor if the actual Federally audited overhead factor has not been determined at the time services are performed. Appropriate adjustments to reflect an increase or decrease in said overhead shall be made upon determination of the actual audited overhead factor.

The OWNER shall not be obligated to reimburse the ENGINEER for costs incurred in excess of the estimated cost set forth above, and the ENGINEER shall not be obligated to continue performance of said work or otherwise to incur costs in excess of the estimated cost set forth above, unless and until the OWNER shall have notified the ENGINEER in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the revised estimated cost of said work. When and to the extent that the estimated cost set forth has been increased, any costs incurred by the ENGINEER in excess of the estimated cost prior to such increases shall be allowable to the same extent as if such costs had been incurred after the increase.

The ENGINEER shall submit its invoice for services upon the completion of each heretofore described Task.

For any services heretofore described in this Agreement, but for which no estimated costs have been included, such estimates of cost and a fixed fee or other appropriate methods of compensation shall be incorporated into this Agreement upon approval by both parties.

ARTICLE 4. DESIGN CREDIT. Whenever renderings, photographs of renderings, photographs of models, or photographs of the project are released by the OWNER for publicity, proper credit for engineering shall be given to the ENGINEER; provided the giving of such credit is without cost to the OWNER.

ARTICLE 5. SUCCESSORS AND ASSIGNMENTS. The OWNER and the ENGINEER each binds himself, his partners, successors, executors, administrators, and assigns to the other party to this Agreement, and to the partners, successors, executors, administrators and assigns of such party in respect to all covenants of this Agreement. Any subcontracting by the ENGINEER shall be in accordance with applicable State and Federal law and the General Conditions to the Agreement.

ARTICLE 6. OWNERSHIP OF DOCUMENTS. All reports and other work product of the ENGINEER for this Project are instruments of service for this Project only and shall remain the property of the ENGINEER whether the Project is completed or not, except as provided for in the General Conditions to this Agreement. Reuse of any of the instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other project without the written permission of the ENGINEER shall be at the OWNER'S risk and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorney's fees arising out of such unauthorized reuse of the ENGINEER'S instruments of service by the OWNER or by others acting through the OWNER. Any reuse or adaptation of the ENGINEER'S instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amounts to be agreed upon by the OWNER and the ENGINEER.

ARTICLE 7. GOVERNING LAWS. This Agreement shall be governed by the law of the State of Indiana.

ARTICLE 8. TERMINATION OF PRIOR AGREEMENTS. The OWNER and the ENGINEER, upon the execution of this Agreement, do hereby terminate an agreement between them dated April 15, 1975 and entitled "Agreement for Engineering Services for Advanced Waste Treatment Project", and both parties are hereby released and relieved from further duties and obligations under said agreement or any of the terms thereof.

ARTICLE 9. EXHIBIT. Attached hereto and made a part of this Agreement is Exhibit "A", General Conditions to Engineering Contracts.

ARTICLE 10. PERSONNEL AND FACILITIES. The ENGINEER estimates that the performance of the aforementioned services will require the number and class of employees as follows:

		Manyears
(a)	Field Crews	1
(b)	Draftsmen	1-1/4
(c)	Designers	1
(d)	Jr. Engineers	2-1/2
(e)	Engineers	2-1/4
(f)	Sr. Engineers	2-1/2
(g)	Principal Engineer	1

The services will be performed from the Indianapolis, Indiana office, provided however, the ENGINEER reserves the right to change the number and/or class of employees and the office where the work will be performed if said changes are required so as not to delay the work, because of prolonged employee absence or resignations.

ARTICLE 11. EXECUTION. The OWNER and the ENGINEER hereby agree to the full performance of the covenants contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate this _____ day of _____, 1973.

HOWARD NEEDLES TAMMEN & BERGENDOFF
HENRY B. STEEG & ASSOCIATES DIVISION
ARCHITECTS ENGINEERS PLANNERS

By _____
Partner

CITY OF FORT WAYNE, INDIANA

By _____
Robert E. Armstrong, Mayor

APPROVED AS TO FORM AND LEGALITY

_____
Assoc. CITY ATTORNEY

By _____

_____

_____
Its Board of Public Works

ATTEST:

_____
Clerk

EXHIBIT "A"

GENERAL CONDITIONS

1. General

(a) The Owner and the Engineer agree that the following provisions shall apply to the EPA grant-eligible work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.

(b) The work under this agreement is funded in part by a grant from the U. S. Environmental Protection Agency. Neither the United States nor the U. S. Environmental Protection Agency (hereinafter,"EPA") is a party to this agreement. This agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" mean the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.

(c) The rights and remedies of the owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this agreement.

2. Responsibility of the Engineer

(a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.

(b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of this agreement.

(c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of his work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(d) The Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, Owner-furnished data or any third party. The Engineer shall not be responsible for any time delays in the project caused by circumstances beyond the Engineer's control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the Engineer and are utilized, the Engineer shall be liable only for gross negligence to the extent of such utilization.

3. Scope of Work

The services to be rendered by the Engineer shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. Changes

(a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performce of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.

(b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.

(c) In the event that there is a modification of EPA requirements relating to the services to be performed under this agreement subsequent to the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

5. Termination

(a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: Provided, That such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the Engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.

(c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.

(d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.

(e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work

taken over by the Owner for completion will be completed at the Owner's risk, and the Owner will hold harmless the Engineer from all claims and changes arising out of improper use of the Engineer's work.

(d) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

6. Remedies

Except as may be otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

7. Payment

(a) Payment shall be made in accordance with the payment schedule incorporated in this agreement as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. If no such payment schedule is incorporated in this agreement, the payment provisions of paragraph (b) of this clause shall apply.

(b) Monthly progress payments may be requested by the Engineer and shall be made by the Owner to the Engineer as soon as practicable to upon submission of statements requesting payment by the Engineer to the Owner. When such progress payments are made, the Owner may withhold up to ten percent of the vouchered amount until satisfactory completion by the Engineer of work and services within a Step called for under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he shall release to the Engineer such excess amount.

(c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the Engineer under this agreement, which estimates shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.

(d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner

arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design

(a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this agreement except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect of the date of execution of this agreement.

(b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer.

(c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a)(6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal". With regard to materials, if a single material is specified, the Engineer must be prepared to substantiate the basis for the selection of the material.

(d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.

(e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. Audit: Access to Records

(a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this agreement. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and the State water pollution control agency, or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.

(b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all their subcontracts directly related to project performance which are in excess of $10,000.

(c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).

(d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the Engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Engineer.

(e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. Price Reduction for Defective Cost or Pricing Data

(This clause is applicable if the amount of this agreement exceeds $100,000).

(a) If the Owner or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be subject to the Remedies clause of this agreement.

(NOTE - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

11. Subcontracts

(a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the Owner during the performance of this agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.

(b) The Engineer may not subcontract services in excess of thirty percent (or _____ percent, if the Owner and the Engineer hereby agree) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. Labor Standards

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

(a) Davis-Bacon Act (40 U.S.C. 276a-276a-7):

(b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);

(c) Copeland Anti-Kickback Act (18 U.S.C. 874); and

(d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and other relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. Equal Employment Opportunity

In accordance with EPA policy as expressed in 40 CFR 30.429-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. Covenant Against Contingent Fees

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. Gratuities

(a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent

or representative of the Engineer, to any official, employee or agent of the Owner, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement, the Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement or may pursue such other rights and remedies provided by law or under this agreement: Provided, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this agreement.

(b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

17. Patents

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this agreement, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with said Subpart D of 40 CFR Part 30. The Engineer hereby agrees that the disposition of rights to invention made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The Engineer shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. Copyrights and Rights in Data

(a) The Engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with EPA grant funds), technical reports, operating manuals, and other work submitted with a Step 1 Facilities Plan or with a Step 2 or Step 3 grant application or which

are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this agreement, including the right to use, duplicate and disclose, such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the Engineer. If the material is copyrightable, the Engineer may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The Engineer shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copyrightable Subject Data.

(b) All such Subject Data furnished by the Engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that the Engineer does not represent such Subject Data to be suitable for reuse on any other project or for any other purpose. Any reuse by the Owner without specific written verification or adaptation by the Engineer will be at the risk of the Owner and without liability to the Engineer. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.

EXHIBIT "B"

VALUE ENGINEERING SERVICES
FOR
PHASES B AND C
OF
ADDITIONS AND IMPROVEMENTS TO WASTEWATER FACILITIES
FORT WAYNE, INDIANA

EPA PROJECT NO. C180774

Introduction

The City of Fort Wayne, Indiana, has filed an application for Federal and State financial grant assistance for the design of advanced wastewater treatment facilities. This application includes a proposal to include value engineering services for Phases B and C of the three-phase design. It is the purpose of this Exhibit to provide information concerning the proposed value engineering (VE) services.

Scope of VE Services

The overall scope of the grant project includes the preparation of plans and specifications suitable for construction of a three-phase project. Phase A will upgrade the aeration process efficiency to permit single-stage nitrification to 42 MGD; Phase B will provide full-scale nitrification to 60 MGD; and Phase C will provide effluent polishing to a 98 percent removal efficiency.

One 24-hour workshop is to be held for Phase B and two 40-hour workshops are scheduled for Phase C. The names of key personnel designated for assignment to the VE team, the total hours and costs estimated for the VE services, and the schedules for VE activities are displayed below:

VALUE ENGINEERING SERVICES - PHASE B

Personnel and Manhour Estimates

Key Personnel

Lee J. Holloway, Team Leader	100 hours
Foster A. McMasters, Team Member	40 hours
John E. Racek, Team Member	40 hours

Others

Team Members (Electrical, Estimators, etc.)	20 hours
Principals	100 hours
Typist	40 hours
Total	340 hours

Schedule

Review Design Summaries and Background Data	July, 1978
Conduct Workshop	August, 1978
Preliminary Report	August, 1978
Conference with Owner, Engineer, and VE Team Leader	September, 1978
Final Report	October, 1978

Estimated Cost

Estimated Cost for VE Services for Phase B	$13,496.00

4011

TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR ENGINEERING SERVICES FOR ADDITIONS & IMPROVEMENTS TO THE WASTEWATER FACILITIES BETWEEN CITY & STEEG, ENGNRS.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS S-78-03-32

SYNOPSIS OF ORDINANCE AGREEMENT FOR ENGINEERING SERVICES FOR ADDITIONS & IMPROVEMENTS TO WASTEWATER FACILITIES BETWEEN CITY & STEEG ENGINEERS, FOR ENGINEERING SERVICES TO DESIGN ADVANCE WASTEWATER TREATMENT FACILITIES NECESSARY TO MEET OUR NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT AS ISSUED BY STATE OF INDIANA.

(AGREEMENT ATTACHED)

EFFECT OF PASSAGE COMPLIANCE FOR NPDES PERMIT REQUIRED BY STATE BOARD OF HEALTH & EPA

EFFECT OF NON-PASSAGE PENALTY BY STATE BOARD OF HEALTH & EPA

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) AMOUNT TO BE DETERMINED BY THE CURRENT FEDERALLY AUDITED OVERHEAD FACTOR.

ASSIGNED TO COMMITTEE

EP